

11 September 2024

Dear

ATISN 20846

Information requested

Thank you for your request which we received on 13 August. You asked for:

1. It appears that HCC's Board Minutes have not been published on its website since 8 September 2022. Was a decision made not to publish the Minutes, when was that taken, and what were the reasons for that?
2. We would request copies of HCC's Board Minutes from November 2022 to the present, please.
3. Earlier this year, there was an investigation into complaints of bullying against a member of staff at HCC. We understand the complaints referred to five different types of bullying, and that three were upheld. We request the following information in relation to the investigation, please:
 - a) how many individuals made complaints, and when? (i.e. What were the dates for the complaints?)
 - b) What were those complaints?
 - c) What were the findings and outcomes of the investigation?
4. Is the person who was subject to the complaints mentioned above still in post at HCC?
5. What was the total cost of investigating the bullying claims referred to above?
6. We also request, please, a summary of the complaints and outcomes in the investigation in relation to former HCC Chief Executive, Gwyn Howells.
7. What was the total cost of the investigation into complaints made against Gwyn Howells?
8. How many HCC staff have left the organisation from September 2022 to the present?
9. What are the monthly payments made to the Interim Chief Executive, Heather Anstey-Myers, from the time of her appointment to the present?
10. When was Stay Gold Media contracted by HCC, what was the length of that contract, and what is the total cost?

Our Response

Following a search of our paper and electronic records, we have established that:

- The Welsh Government holds some of the information you have requested at items 3c and 6 above. However we have concluded that this information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at Annex A to this letter.
- The remainder of the information you have requested above is not held by the Welsh Government. We believe Hybu Cig Cymru holds the information you are seeking. You can ask them for the information at info@hybucig.cymru or I can transfer your request to them. Please inform me in writing if you would like me to transfer your request.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex A

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

Individual detail of expense forms submitted to Welsh Government by HCC directors, to include dates, purpose and descriptions of activities of all expenses claimed.

This Annex sets out the reasons for the engagement of section 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 40(2) – Personal Data

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data: the findings of the investigation and summary of the complaints amount to personal data about a living individual.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

The personal data is detail held regarding an investigation of a living individual. The legitimate interest is in understanding the outcome of that investigation and to all public scrutiny of the process of investigation of that individual.

2. Is disclosure necessary?

It would not be possible to meet the legitimate interest identified above without disclosure of the investigation. Public scrutiny of the process can partially be met by other information we are releasing or have released or that is otherwise in the public domain.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

In any investigative process there is a strong presumption that the process will be undertaken in a confidential manner, both to ensure the integrity and safe space of the process but especially to give due respect to the fundamental rights of privacy and the subject's data protection rights as enshrined in law. A strong countervailing public interest in the information would need to be identified to over-ride this presumption in favour of those fundamental rights. There is a legitimate interest in understanding that a full and fair investigation has been undertaken, but this aspect of the legitimate interest may be met with the information that is being supplied or is in the public domain. The findings of that investigation itself, however, cannot be ascertained without release of the personal information. The balance of public interest might be swayed if the data subject remained in a high level public post. But in the absence of that fact, I find the public interest in the information is not sufficient to countervail the data subjects' fundamental rights and freedoms. The information is thus being withheld.